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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER
COMPANY FOR APPROVAL OF ITS PLAN
FOR STRANDED COST RECOVERY

DOCKET NO. E-01933A-98-0471

IN THE MATTER OF THE FILING OF
TUCSON ELECTRIC POWER COMPANY
OF UNBUNDLED TARIFFS PURSUANT TO
A.A.C. R14-2-1601 et seq.

DOCKET NO. E-01933A-97-0772

IN THE MATTER OF THE APPLICATION
OF ARIZONA PUBLIC SERVICE
COMPANY FOR APPROVAL OF ITS PLAN
FOR STRANDED COST RECOVERY

DOCKET NO. E-01345A-98-0473

IN THE MATTER OF THE FILING OF
ARIZONA PUBLIC SERVICE COMPANY
OF UNBUNDLED TARIFFS PURSUANT TO
A.A.C. R14-2-1601 et seq.

DOCKET NO. E-01345A-97-0773

IN THE MATTER OF COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-0165

**AECC'S RESPONSE TO STAFF'S
REQUEST FOR PROCEDURAL ORDER**

Pursuant to the Procedural Order dated November 6, 1998, ASARCO Incorporated, Cyprus Climax Metals Company, Inc., Enron Corp. and Arizonans for Electric Choice and Competition (collectively these parties will be referred to hereinafter as the "AECC") hereby submit their comments in response to the Staff's Request for Procedural Order dated November 5, 1998.

1 AECC has a number of concerns regarding the two settlement agreements Staff has entered into
2 with APS and TEP, respectively, as it appears that consumers will pay more under these
3 agreements than they are currently paying under regulation. AECC is further concerned that the
4 expedited hearing process requested by Staff will deny AECC and other interested stakeholders due
5 process of law because there will not be an adequate opportunity to address concerns arising out of
6 the settlement agreements. Accordingly, AECC requests that the hearing in this matter not be
7 scheduled until December 2, 1998 and that all parties, including the intervenors, be given until
8 November 30, 1998 to submit their written comments and pre-filed testimony regarding the
9 settlement agreements.

10 **I. THE STAFF AND APS/TEP SETTLEMENT AGREEMENTS.**

11 On November 4, 1998, Jack Rose, Executive Secretary of the Arizona Corporation
12 Commission, executed settlement agreements between Staff and APS and Staff and TEP covering
13 many of the disputed issues relating to the introduction of competition, including stranded cost
14 recovery and unbundled tariff filings. These settlement agreements concluded four months of
15 negotiations between Staff and these Affected Utilities' representatives. These negotiations, which
16 often took place during evenings and weekends, were not open to AECC's representatives, or as
17 AECC has been informed, to representatives of any other interested consumers groups. This is true
18 despite repeated requests by AECC to have its representatives participate directly in the settlement
19 negotiations between Staff and APS and TEP.

20 AECC's concerns with the settlement agreements are too numerous to express herein. In
21 fact, as the agreements were only made public last week, AECC has not had an adequate
22 opportunity to assess the impact of the agreements on competition for electric power generation in
23 Arizona. However, even a cursory glance at the settlement agreements demonstrates that AECC
24 and all consumers have much to be concerned about. For example:

- 25 • The settlement agreements call for an inadequate market
26 generation credit and will therefore be anti-competitive.

- The APS settlement agreement fails to provide for the recovery of regulatory assets through market prices whenever feasible. Thus, this agreement creates the possibility that stranded costs will be overrecovered.
- The TEP settlement agreement partially diverts proceeds from the sale of TEP's generation assets to purchase APS' transmission assets instead of using such proceeds to reduce the CTC for TEP's customers.
- The agreements are incomplete. For instance, in several places where important financial information should be located, there are merely blanks. Further, important exhibits have not been attached.
- The agreements claim to take precedence over the lawfully promulgated Electric Competition Rules.
- On their face, the agreements cannot be modified and must be approved unchanged by November 25, 1998 in a non-appealable order.

II. THE HEARING SCHEDULE SOUGHT BY STAFF WILL NOT AFFORD INTERESTED PARTIES DUE PROCESS.

In essence, the settlement agreements are an effort by Staff and APS and TEP to resolve a number of complex issues affecting millions of consumers and billions of dollars. Nevertheless, after several months of negotiations, Staff now seeks to unfairly saddle these consumers with the burden of having to first, evaluate complex documents covering matters that have been at issue for several years, and then, prepare written comments and pre-filed testimony, as well as prepare for a hearing, all in a mere two weeks. Setting aside the disconcerting fact that the settlement agreements already reflect the pre-ordained result sought by Staff, APS and TEP, Staff's request would deny interested parties due process of law. It is clearly not in the public interest to deny interested stakeholders an adequate opportunity to prepare to respond to the settlement agreements.

Indeed, at different times throughout the competition proceedings, each of the Commissioners has expressed his assurance that the Commission would not simply "rubber stamp" agreements negotiated by Staff behind closed doors without the direct participation of the other parties. Rather, the Commissioners have repeatedly promised consumers that due process requirements would be fulfilled and that all interested parties would be given an adequate

1 opportunity to voice their concerns. Unfortunately, the expedited hearing process sought by the
2 parties to the settlement agreements will not fulfill these due process requirements. Without
3 affording the interested public due process, the Commission risks unraveling everything this
4 Commission, the Affected Utilities and interested stakeholders have accomplished over the last
5 four years thereby denying Arizona's electric power consumers the benefits free and open
6 competition is intended to bring.

7 **III. RELIEF REQUESTED.**

8 Frankly, AECC submits that several months would actually be needed to fully evaluate
9 the substance and impact of the Staff's settlements with APS and TEP. However, AECC is
10 cognizant of the overwhelming need to introduce meaningful competition on January 1, 1999.
11 Therefore, AECC submits that the hearing on the settlement agreements should commence on
12 December 2, 1998 with comments and pre-filed testimony (by all parties including Staff, APS
13 and TEP) being due on November 30, 1998.¹ This would allow interested parties some
14 additional time to evaluate the agreements and to prepare to voice their concerns and seek
15 appropriate modifications by the Commission. This would also allow the Commission enough
16 time to issue a decision on this matter prior to the January 1, 1999 deadline for the introduction
17 of competition.

18
19 DATED this 10th day of November, 1998.

20 FENNEMORE CRAIG, P.C.

21
22 By 
23 C. Webb Crockett

24 ¹ Staff, APS and TEP are likely to assert that the agreements, as written, must be approved before
25 November 25, 1998 or they are void. However, these parties unilaterally agreed to that date without any
26 input from any other interested party. Surely, if it will promote the public interest, Staff, APS and TEP
should be willing to agree to a minor amendment to accommodate the needs of the very public whose
interests the agreements purport to serve.

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